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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,279	10/14/2003	Richard Wayne McQuerry	Rick	4925

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EXAMINER

KIM, SANG K

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/685,279	Applicant(s) MCQUERRY, RICHARD WAYNE	
	Examiner SANG KIM	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on Response to election 4/6/05.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
     4a) Of the above claim(s) 6,7 and 10-16 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-5,8 and 9 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/14/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### ***Election/Restrictions***

Applicant's election without traverse of Species I (claims 1-5 and 8-13) in the reply filed on 4/6/05 is acknowledged. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse.

Applicant indicates in the election that claims 10-13 are readable on the elected species. However, claims 10-13 are drawn to Species III, which shows the ring with a flexibility to flex apart the frame to receive a roll or spool, as shown in figure 14. Thus claims 10-13 are not readable on elected species I.

Claims 6-7 and 10-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/6/05.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 1, the term "means to control the separation of said limbs"; in claim 8, "means to attach".

### ***Claim Objections***

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Claims 2-3 and 5 are objected to because of the following informalities: In claim 2, "the distance" should be --a distance--; In claim 3, each claim begins with a capital letter and ends with a period. Appropriate corrections are required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the narrower end" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Lyons, U.S. Patent No. 6527217 B1.

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With respect to claim 1, Lyons '217 shows a dispensing assembly (10) comprising: two opposing limbs (12a-b) flexibly connected at one end (16) and detachably spaced apart at the other end (near 23a-b) and a means to control separation of said limbs (i.e., using a bolt 30), whereby [wherein] said limbs (12a-b) may be [are] separated to receive a roll or spool (s) of product to be dispensed, see figures 1-3, and column 2, lines 65-67.

With respect to claim 2, Lyons '217 shows the limbs are U-shaped, whereby [wherein] the distance that separates the said limbs can be fixed, see figures 1-2.

With respect to claim 3, Lyons '217 shows the limbs form a tapered frame, whereby [wherein] said frame is narrower at one end and wider at the other end (i.e., measured from 26a-b to 18a-b).

With respect to claim 4, Lyons '217 shows the means to control the separation of said limbs (30) is a circular enclosure (i.e., a bolt is a circular and enclosed within).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick, U.S. Patent No. 1230794, in view of Lyons, U.S. Patent No. 6527217 B1.

With respect to claim 1, Schick '794 shows a dispensing assembly comprising: two opposing limbs (16-19, 16-19) pivotally connected at one end (15) and detachably spaced apart at the other end (near 20) and a means to control the separation of said limbs (24), whereby said limbs may be separated to receive a roll or spool (30) of product to be dispensed, see figures 1-5.

Schick '794 does not explain whether the limbs are made of a flexible material such as plastic, steel, titanium, etc.

Lyons '217 teaches the limbs made of a flexible material such as plastic, steel, titanium, etc., see column 2, lines 65-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Schick '794 by adding a flexible material as taught by Lyons '217 to accommodate the spool flexibly for easier loading and unloading. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material such as plastic, steel, titanium, etc. on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claim 4, as advanced above, Schick '794 shows the means to control the separation of said limbs (24) is a circular enclosure, see figures 1-5.

With respect to claim 5, as advanced above, Schick '794 shows the circular enclosure contains a plurality of circular enclosures (left and right sides), whereby said enclosure would remain attached to said limbs when said enclosure (24) slides toward the narrower end, see lines 85-90.

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With respect to claims 8-9, as advanced above, Schick '794 shows bracket members (21) comprising an axle (22) and a means to attach (i.e. bolts) said bracket members to said limbs, whereby ground wheels (25) can be attached to said axles, see figure 5.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANG KIM whose telephone number is 571-272-6947. The examiner can normally be reached Monday through Friday from 8:00 A.M. to 5:30 P.M. alternating Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki, can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SK

4/26/05

*Kathy Matecki*

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